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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

SEP 13 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit	)	

To: Administrative Law Judge Richard L. Sippel

**OPPOSITION TO ADAMS' THRESHOLD SHOWING  
OF UNUSUALLY POOR BROADCAST RECORD**

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September 13, 1999

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## SUMMARY

In its *Threshold Showing*, Adams attempts to make a threshold showing that Reading has an unusually poor past broadcast record. A licensee's past broadcast record can be a relevant factor in the Commission's comparative selection process, but only if that record is unusually good or unusually poor. Generally, a showing of an unusually poor past broadcast record involves "either a failure to meet the public's needs and interests or a significant failure to carry out representations made to the Commission."

Adams first attempts to show, based on the *Mt. Baker* and *Religious Broadcasting* decisions, that Micheal Parker has been found to have engaged in fraudulent or deceitful conduct before the Commission. However, the Commission in its 1986 *Character Policy Statement* concluded that "if consideration of character does not lead to disqualification, it will no longer be a relevant criterion in comparative renewal hearings." The Presiding Officer has already considered and denied Adams *Motion to Enlarge Issues* regarding Reading's basic character qualifications. Therefore, Adams is precluded from raising comparative character issues in this proceeding.

Next, Adams contends that a question exists regarding whether Micheal Parker's operations of other stations he has controlled meet the public's needs and interests. However, the information in Adams' showing simply does not afford a sufficient basis for the Presiding Officer to conduct a full evidentiary hearing on Reading's past broadcast record. Further, Adams impermissibly seeks to have the

Commission intervene into matters relating to a licensee's selection or presentation of particular programming.

Finally, Adams contends that it has obtained evidence that Tom Root is currently involved in some capacity in the operation of station WTVE, and therefore, Tom Root must be in a position to influence or control WTVE's operations. However, Tom Root does not have any ownership or positional interest in Reading cognizable under the Commission's multiple ownership rules, and therefore, his involvement in Reading is not relevant to Reading's past broadcast record.

Because Adams has failed to demonstrate, as a threshold matter, that Reading has an unusually poor past broadcast record, the Presiding Officer must reject Adams' *Threshold Showing*.

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**OPPOSITION TO ADAMS' THRESHOLD SHOWING  
OF UNUSUALLY POOR BROADCAST RECORD**

1. Pursuant to Section 1.294 of the Commission's Rules, Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits its *Opposition to Adams' Threshold Showing of Unusually Poor Broadcast Record* ("*Threshold Showing*"). Adams' *Threshold Showing* was filed on September 3, 1999. Pursuant to the Presiding Officer's instructions at the Second Prehearing Conference held on September 10, 1999, Reading's *Opposition* is timely.

2. **Background.** In its *Threshold Showing*, Adams attempts to make a threshold showing, in order to permit it to introduce evidence to show that Reading should receive a comparative demerit, that Reading has an unusually poor

broadcast record. Adams contends that questions exist as to: (1) whether Micheal Parker, as a principal in Reading, has failed to carry out representations made to the Commission with respect to other matters in which he has been involved before the Commission; (2) whether Micheal Parker's operation of other stations he has controlled meet the public's needs and interests; and (3) whether Thomas Root, who has been disbarred from practice before the Commission, may be in a position to influence the operations of WTVF.

3. For the reasons set forth below, Adams' *Threshold Showing* is too insubstantial to satisfy the high threshold standard that Reading has an unusually poor past broadcast record, and therefore, the Presiding Officer must reject Adams' *Threshold Showing*.

4. Threshold Showing Standard. A licensee's past broadcast record can be a relevant factor in the Commission's comparative selection process, but only if that record is unusually good or unusually poor. *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 398 (1965) ("*Policy Statement*").

5. Before an applicant may be permitted to introduce evidence that a competitive applicant should receive a comparative demerit for an unusually poor broadcast record, the applicant must first demonstrate, as a threshold matter, that the competitive applicant's record, in the course of operating other stations, has been unusually poor and thus could be predictive of future unusual performance. *See Gilbert Group, Inc.*, 49 RR 2d 1081, 1082 (1981). Generally, such a showing involves "either a failure to meet the public's needs and interests or a significant

failure to carry out representations made to the Commission.” *Athens Broadcasting Co., Inc.*, 21 FCC 2d 161 at ¶4 (1970). The past broadcast record criterion is not limited solely to programming matters, but includes “all aspects of broadcast operation” which give some indication of what can be expected of the licensee in the future in meeting its responsibilities to the public and to the Commission. *Id.*, citing *East St. Louis Broadcasting Co., Inc.*, 9 FCC 2d 212 (Rev. Bd. 1967).

I. Adams Is Precluded From Presenting Character As A Comparative Factor.

6. Adams relies on the *Mt. Baker*<sup>1</sup> and *Religious Broadcasting*<sup>2</sup> decisions, as well as its *Motion to Enlarge Issues* (“*Motion*”) that it filed on July 15, 1999, to assert that Micheal Parker “has at least twice been found to have engaged in fraudulent or deceitful conduct before the Commission.” *Threshold Showing* at ¶2. Adams contends that in addition to considering Micheal Parker’s alleged misconduct under a basic disqualifying issue, it should also be considered under the past broadcast record criterion of the standard comparative issue. *Threshold Showing* at ¶3.

7. The 1965 *Policy Statement* (¶6) provided for the addition of a comparative issue based on conduct relating to character. However, the

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<sup>1</sup> *Mt. Baker Broadcasting Co., Inc.*, 3 FCC Rcd 4777 (1988).

<sup>2</sup> *Religious Broadcasting Network*, 2 FCC Rcd 6561 (ALJ 1987), modified, 3 FCC Rcd 4085 (Rev. Bd. 1988).

Commission, when it issued the *Character Policy Statement*<sup>3</sup> in 1986, eliminated character as a comparative factor and now treats it only as a basic qualification issue. The Commission expressly stated that “comparative character issues should be excluded from consideration in comparative renewal proceedings” and “if consideration of character does not lead to disqualification, it will no longer be a relevant criterion in comparative renewal proceedings.” *Character Policy Statement* at ¶114.

8. In this proceeding, the Presiding Officer has already considered and denied Adams’ *Motion* regarding Reading’s basic character qualifications.<sup>4</sup> Although Adams claims that its *Threshold Showing* is “offered separately and independently” from its *Motion* (*Threshold Showing* at ¶6), Adams fails to demonstrate how the claims it presented to raise a basic character qualification issue in its *Motion* now constitute anything other than an attempt to resurrect the Commission’s long-defunct comparative character analysis. Because Adams’ *Motion* was denied, and therefore, no basic character qualification issue was designated against Reading, under the *Character Policy Statement* (¶114), Adams is now precluded from raising comparative character issues in this comparative renewal proceeding. Therefore, Micheal Parker’s alleged misconduct in the *Mt. Baker* and

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<sup>3</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1231-1232 (¶¶111-13) (1986), *modified*, 5 FCC Rcd 3252 (1990), 6 FCC Rcd 3448 (1991), 7 FCC Rcd 6564 (1992) (“*Character Policy Statement*”).

<sup>4</sup> *Memorandum Opinion and Order*, FCC 99M-49 (released September 3, 1999).



*Religious Broadcasting* cases presented by Adams in its *Motion* must be excluded from consideration as a comparative matter in this proceeding.<sup>5</sup>

II. Adams' Showing Regarding Micheal Parker's Operation Of Other Stations Is Too Insubstantial To Demonstrate That A Question Exists Regarding Reading's Ability To Meet The Public's Needs and Interests.

9. Adams cites Micheal Parker's failure to construct a full-service television station in Anacortes, Washington and the resulting cancellation of the construction permit for that station, the subject of the *Mt. Baker* decision, to show that Micheal's Parker's operation of other broadcast stations has been unusually poor, and accordingly, could be predictive of Reading's future performance with regard to meeting the public's needs and interests. Adams' showing is too insubstantial to satisfy the high threshold standard required. See *Virgil L. Pearman*, 6 FCC Rcd 1891 at ¶7 (1991) citing *Omaha TV 15, Inc.*, 4 FCC Rcd 730, 735 at ¶39 (1988) (there is a high standard for threshold showing of unusually good or poor past broadcast record).

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<sup>5</sup> Reading notes the *Character Policy Statement* did provide for "consideration of compliance with the Communications Act and/or the Commission's rules and policies as it may relate to an incumbent's past broadcast record in the context of acquiring a legitimate renewal expectancy." *Character Policy Statement* at n.125. However, as the Commission explained, "the renewal context evidence is taken relating to the existing licensee's performance during the last license term to determine whether that performance provides the basis for a further renewal and what weight should be given to that factor known as a 'renewal expectancy'." See *Formulation of Policies and Rules Relating to Broadcast Renewal Applicants*, 3 FCC Rcd 5179 (1988) (proceeding terminated). Because the alleged misconduct in the *Mt. Baker* and *Religious Broadcasting* cases occurred prior to the relevant license term and did not involve WTVE, that alleged misconduct must also be excluded from consideration in determining WTVE's claim to a renewal expectancy for its operation in the 1989-94 license term.

10. Perhaps the most significant aspect of Adams' showing is what it does not contain. The *Threshold Showing* completely omits any mention of the past broadcast record, good or bad, of Reading's station, WTVE. Whether Adams likes it or not, that is what this case is supposed to be about. Adams' complete silence as to WTVE's past broadcast record speaks volumes.

11. Although the Anacortes, Washington construction permit issued to Mt. Baker Broadcasting was cancelled, it is ridiculous to think that a single isolated incident that occurred more than ten years ago at another station affords a significant basis for predicting problems in the future operation of WTVE. The Commission determined, in one reported decision, that an applicant had an unusually poor past broadcast record based, in part, on the applicant's withdrawal from three construction permits. *See Athens Broadcasting Co., Inc.*, 21 FCC 2d 161 (1970). However, Reading has been unable to find any reported decision where the Commission determined that an applicant had an unusually poor broadcasting record based on a single incident that occurred more than ten years ago at a different station.

12. Moreover, Adams' showing fails to acknowledge the positive aspects of Micheal Parker's past broadcast record. As shown in Reading's *Motion As to Past Broadcasting Experience of Principals of Reading Broadcasting Inc.* ("Reading's Past Broadcasting Motion"), filed September 3, 1999, through Micheal Parker's efforts three stations have been taken out of bankruptcy or receivership and become

viable broadcast operations that serve the public's needs and interests.<sup>6</sup> The positive showing of Micheal Parker's efforts to restore service to the public by dark stations and take stations out of bankruptcy/receivership proceedings substantially outweighs any negative inference that could be drawn regarding the cancellation of the Anacortes, Washington construction permit, an incident that occurred over ten years ago. The information contained in Adams' *Threshold Showing* simply does not afford a sufficient basis for the Presiding Officer to conduct a full evidentiary hearing on Reading's past broadcast record.

13. Adams next contends that Micheal Parker's decision to broadcast Dr. W. Eugene Scott's religious programming on certain stations in which he is involved demonstrates a failure to meet the public's needs and interests. *Threshold Showing* at ¶13. Adams does not contend that Dr. Scott or any station airing Dr. Scott's programming is violating any Commission rules or policies. Rather, Adams merely contends that Micheal Parker's "unusual choices of programming [*i.e.*, carrying Dr. Scott's religious programming] on some of those stations . . . raises questions as to

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<sup>6</sup> As shown in *Reading's Past Broadcasting Motion*, (1) Michael Parker managed Reading's efforts in successfully taking station WTVE, the subject of this renewal proceeding, out of bankruptcy in 1992; (2) Micheal Parker, as the managing member of the Massachusetts Redevelopment Limited Liability Company and its predecessors-in-interest, oversaw the efforts to put commercial television station WHRC(TV), Norwell, Massachusetts, a station which had been dark and in receivership, into operation in 1996 by arranging for financing, programming, personnel and equipment; and (3) Micheal Parker, as president, sole director and sole shareholder of Two If By Sea Broadcasting Corp., pursuant to a local marketing agreement with the holder of the authorization for commercial television station WHCT, Hartford, Connecticut, oversaw the efforts to put the station back into operation in 1997 by arranging for financing, programming, personnel and equipment.

whether the public will be served by renewal of license of Station WTVE(TV).”

*Threshold Showing* at ¶13.

14. The Commission never resolved the allegations against Dr. Scott<sup>7</sup> and no further action has been sought. However, as Adams shows, Dr. Scott’s religious

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<sup>7</sup> Faith Center, Inc. (“Faith Center”), a nondenominational Christian Church, previously held four broadcast licenses: KHOF-TV, San Bernardino, California; KVOF-TV, San Francisco, California; WHCT-TV, Hartford, Connecticut, and KHOF-FM, Los Angeles, California. In 1977, the Commission received allegations that Dr. Gene Scott, pastor-president of Faith Center, was broadcasting fraudulent fund-raising appeals on KHOF-TV. In 1978, the Commission designated the renewal application of station KHOF-TV for hearing on issues to determine whether Faith Center had conducted fraudulent over-the-air fund raising in violation of 18 U.S.C. § 1343 and had refused to cooperate with Commission investigators. However, the issues were never resolved. The Administrative Law Judge dismissed the KHOF-TV application with prejudice, on the basis of the Faith Center’s failure to prosecute its application by failing to comply with Commission discovery requirements. The Commission affirmed the Judge’s order without resolution of the issues raised. *Faith Center, Inc.*, 82 FCC 2d 1 (1980), *recon. denied*, 86 FCC 2d 891 (1981), *aff’d per curiam without opinion sub nom. Faith Center, Inc. v. FCC*, 679 F.2d 251 (D.C. Cir. 1982), *cert. denied*, 103 S. Ct. 1199 (1983). In 1980, the same issues were designated against WHCT-TV, but again were not resolved because the Commission subsequently approved a distress sale proposed by Faith Center. *Faith Center, Inc.*, 88 FCC 2d 788 (1981); *Faith Center, Inc.*, 83 FCC 2d 401 (1980), *recon. denied*, 49 RR 2d 806 (1981). Ultimately, the Supreme Court upheld the constitutionality of the distress sale policy. *See Metro Broadcasting, Inc.*, 497 U.S. 547 (1990). The same issues were designated against Faith Center’s remaining stations, but again were not resolved. In 1982, Faith Center’s application for renewal of station KHOF-FM was dismissed by the presiding Administrative Law Judge for failure to comply with Commission discovery requirements. *Order*, FCC 82M-2746 (released September 13, 1982). The Review Board affirmed the ALJ’s decision, 92 FCC 2d 1255 (1983), and the Commission denied Faith Center’s application for review by *Order*, FCC 83-530 (released November 18, 1983). Similarly, the presiding Administrative Law Judge dismissed Faith Center’s renewal application for station KVOF-TV for failure to comply with Commission discovery requirements. *Faith Center, Inc.*, 53 RR 2d 797 (1983). This decision was affirmed by the Review Board. *Faith Center, Inc.*, 94 FCC 2d 756 (1983), and the Commission denied Faith Center’s application for review by *Order*, FCC 84-41 (released February 7, 1984). The Court of Appeals affirmed the Commission’s decisions dismissing the renewal applications for stations KHOF-TV and KVOF-TV.

programming continues to be broadcast throughout the world. *Threshold Showing* at Attachment C. Since the allegations against Dr. Scott first arose in 1977 and Dr. Scott continues to provide religious programming, it can be inferred that there are no pending allegations against Dr. Scott with regard to fraudulent over-the-air fundraising. Thus, the only reasonable conclusion that can be drawn is that Adams' concern is about the content of Dr. Scott's religious programming.

15. However, Section 326 of the Communications Act and the First Amendment of the Constitution prohibit any Commission actions which would improperly interfere with the programming decisions of licensees.<sup>8</sup> With certain limited exceptions, such as the broadcast of obscene or indecent programming, licensees are afforded broad discretion in the scheduling, selection and presentation of programs to be aired on their stations. *National Broadcasting Co., Inc.*, 1999 FCC LEXIS 2531 at ¶18 (1999).

16. The Commission has pronounced its "inveterate reluctance to involve itself systematically in any particular broadcast licensee's individualistic programming choices." *Knoxville Broadcasting Corp.*, 103 FCC 2d 669 at ¶25 (Rev. Bd. 1986). To do so "would be both unavoidably subjective and uncomfortably close

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*Faith Center, Inc. v. FCC*, No. 83-2295 (D.C. Cir. May 9, 1985) (*per curiam*); *Faith Center, Inc. v. FCC* (D.C. Cir. May 9, 1985).

<sup>8</sup> The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech, or of the press." U.S. Const. Amend. 1. Section 326 of the Communications Act of 1934, as amended, specifically provides that "nothing in this chapter shall be understood or construed to give the Commission the power of censorship . . . and no regulation or condition shall be promulgated or

to the penumbra of the anticensorship provisions of Section 326 of the Communications Act.” *Id.*

17. Rather than presenting a legally cognizable issue with respect to Reading’s past broadcast record, Adams impermissibly seeks to have the Commission intervene into matters relating to a licensee’s selection or presentation of particular programming. The Presiding Officer must reject this part of Adams’ *Threshold Showing*.

III. Thomas Root’s Involvement In Reading Is Not Relevant To A Consideration Of Reading’s Past Broadcast Record.

18. Finally, Adams contends that it has obtained evidence that Tom Root is currently involved in some capacity in the operation of station WTVE. Adams speculates that Tom Root could be in a position to influence or control WTVE’s operations. *Threshold Showing* at ¶16-18.

19. As defined, the term “past broadcast record” refers to experience of an applicant’s principal consisting of significant participation in operation of a broadcast station in which he or she held ownership. *See Omaha TV 15, Inc.*, 4 FCC Rcd 730 (1988). Although the Commission’s *Policy Statement* speaks in terms of past record by one with “an ownership interest in the applicant,” an individual’s status as an officer, director, general manager and future stockholder in an applicant was found to be sufficiently analogous to that of a principal to make his

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fixed by the Commission which shall interfere with the right of free speech by means of radio communications.” 47 U.S.C. § 326.

past broadcast record relevant to the applicant's comparative qualifications. *See East St. Louis Broadcasting Co., Inc.*, 9 FCC 2d 212 at ¶6 (Rev. Bd. 1967).

20. The Commission previously determined that Tom Root's past misconduct should be considered where he had ownership interests in a station cognizable under the Commission's multiple ownership rules and where he had potential to influence or control the operations of a station. *See Petroleum V. Nasby Corporation*, 8 FCC Rcd 4035 at ¶7 (1993) citing the *Character Policy Statement* at 1205-6. In that case, Tom Root was an officer and director as well as controlling shareholder of more than 50% of the stock of the applicant.

21. Tom Root has no ownership interest or positional interest in Reading cognizable under the Commission's multiple ownership rules. *See* 47 C.F.R. 73.3555. Tom Root initially became involved with Reading as an independent contractor beginning in July 1995 and continuing through July 31, 1996. As an independent contractor, Tom Root provided services such as drafting business plans for construction of a new tower, reviewing station contracts for compliance purposes and developing a database of cable television systems for must-carry notifications. On August 1, 1996, Reading employed Tom Root as special assistant to the President. In that position, Tom Root's duties include maintaining stock ownership records for Reading, drafting documents for use by management and monitoring contract compliance for Reading. Tom Root is not now, nor has he ever been an officer, director or manager of Reading, nor has he ever held any ownership interest

or future ownership rights, either directly or indirectly, in Reading.<sup>9</sup> In his capacity either as independent contractor or as special assistant, Tom Root did not have nor does he now have any decision-making authority with regard to programming, personnel or finances at Reading or WTVE.

22. Therefore, under the *Character Policy Statement* and Commission precedent, Tom Root's involvement at Reading, first as an independent contractor and now as an employee, and without any ownership interest or significant positional interest, is not relevant to a determination of Reading's past broadcast record.

23. Because Adams has failed to demonstrate, as a threshold matter, that Reading has an unusually poor past broadcast record, Reading respectfully requests the Presiding Officer to reject Adams' *Threshold Showing*.

Respectfully submitted,  
READING BROADCASTING, INC.

By: Thomas J. Hutton  
Thomas J. Hutton  
Randall W. Sifers

Its Attorneys

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September 13, 1999

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<sup>9</sup> See Exhibit A.



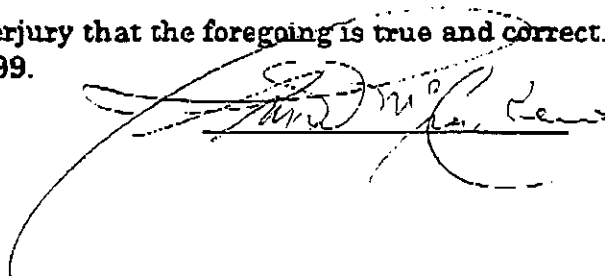
## EXHIBIT A

Declaration of Frank McCracken

Frank McCracken hereby declares as follows:

1. I am and have been a director of Reading Broadcasting, Inc. ("RBI") for several years, pre-dating the time that Thomas Root became involved as an independent contractor for RBI with respect to WTVE(TV). I also serve as Executive Vice President of RBI and am General Manager of WTVE(TV).
2. Thomas Root served as an independent contractor to WTVE(TV) from July 1995 through July 31, 1996. As an independent contractor, Thomas Root provided services such as drafting business plans for construction of a new tower, reviewing station contracts for compliance purposes and developing a database of cable television systems for must-carry notifications.
3. On August 1, 1996, RBI employed Thomas Root as special assistant to the President. Thomas Root continues to be employed in that position. As special assistant to the president, Thomas Root performs tasks assigned to him by Mike Parker, by me and, from time to time, by Jack Linton. Such duties have included maintaining stock ownership records for RBI, drafting documents for use by management and monitoring contract compliance for RBI.
4. Thomas Root, is not now, nor has he ever been an officer, director or manager of RBI. He has no authority to direct hiring or firing, or to direct or supervise any employee. He has never signed any program or transmitter log or any other document filed with or required to be maintained by the FCC, nor has he ever directed anyone else to do so. At no time has he had, or does he now have, any decision-making authority with regard to programming, personnel or finances at RBI or WTVE(TV).
5. Thomas Root has never held any ownership or future ownership rights (either directly or indirectly) in RBI.

I declare under perjury that the foregoing is true and correct. Executed on September 13, 1999.

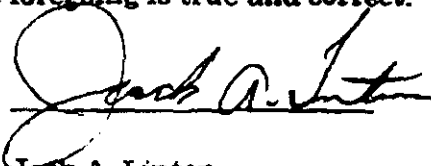


**Declaration of Jack A. Linton**

Jack A. Linton hereby declares as follows:

1. I am and have been a stockholder of Reading Broadcasting, Inc. ("RBI") for several years, pre-dating the time that Thomas Root became involved as an independent contractor for RBI with respect to WTVE(TV). I served as corporate attorney and attended board of directors meetings from 1995 through August 1997, and I became a director of RBI in February 1998. I have been aware of Mr. Root's past and, as a member of the Pennsylvania bar myself, I have observed Mr. Root's performance to ensure that his activities for RBI did not amount to the practice of law.
2. Thomas Root has never been an officer, director or manager of RBI, nor has he ever held any ownership interest or future ownership rights (either directly or indirectly) in RBI.

I declare under perjury that the foregoing is true and correct.

  
Jack A. Linton

WAS1 #693897 v1

## CERTIFICATE OF SERVICE

I, Myra Powe, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on September 13, 1999, a copy of the foregoing OPPOSITION TO ADAMS' THRESHOLD SHOWING OF UNUSUALLY POOR BROADCAST RECORD was delivered by hand to the following:

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\_\_\_\_\_  
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